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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/751,070
Filing Date: January 02, 2004
Appellant(s): DAMIR ET AL.

Mark L. Lorbiecki
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11-17-2008 appealing from the Office action mailed 4-30-2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

An amendment was filed on December 12, 2007 to add the recitation of " a generally planar sheet of textile material" to independent claim 1. This amendment was in response to the Non-Final Office Action mailed July 12, 2007, which rejected all of the claims under 35 USC 112, paragraph 2 as being incomplete and indefinite in that the blanket material or surface sheet where the illustrations are placed have not been claimed. All of the claims in the July 12, 2007 action were also rejected under 35 USC 103 (a) over Isola et al. Appellant has incorrectly stated that "patentable subject matter was recognized in the same currently pending claims 39, 41 and 44-51 in the July 12, 2007 action." This is not true. No such patentable subject matter was recognized in the July 12, 2007 action since all of the claims were rejected under 35 USC 103(a) in view of Isola et al. The same rejection was made in the Final Action mailed April 30, 2008.

Also, the claims rejected in the July 12, 2007 action were not the same as the currently pending claims. The July 12, 2007 claims lacked what was added in the last Amendment filed December 12, 2007 as stated above. The April 20, 2008 Final Office Action finally rejected the currently pending claims 39, 41 and 44-51 as written in the "Status of Amendments After Final" in the Brief.

**(5) Summary o f Claimed Subject Matter**

The summary of the claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 3,613,133 | Isola et al | 10-1971 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 39, 41 and 44-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isola et al (US 3,613,133) in view of common knowledge.

Isola et al discloses a blanket 16 with illustrations thereon. Isola et al discloses that any known illustration desired can be placed on the blanket including scenes, articles and persons, etc. (See Isola et al, col. 11, lines 8-48 and figure 16; and col. 5, line 41 – col. 6, line 16). Isola et al discloses sewing (appliqués) the design thereon; the design as being woven within by weaving; labeled or printed thereon (see col. 4, line 62); embossed by providing an impression (see col. 4, line 66) and wherein any of the disclosed means is considered to be detachably attached by pulling the label, appliqués or embroidery off of the surface of the blanket or substrate. No specific means for detachably attaching has been claimed. Isola et al discloses blankets and other bed clothes which are illustrated or printed with " a means defining one or more persons, characters, articles or the like that are depicted as resting, reclining or otherwise lying or positioned on the bed in the same position normally assumed by a person resting or reclining in the bed or any use of repose". (See Isola et al, col. 1, line 31- col. 2, line 8; col. 2, lines 61-65). Isola et al discloses the bed clothes components as indicating different levels of bed clothing/pajamas/sleepwear and its use to sleep wherein the inside bed clothes layers indicate the use of the sleeping clothes on the wearer. The Isola et al specification discloses the principles of a wide and varied use in applications other than in children's beds wherein the illustrations or scenes can be varied for each

user. The outer bed clothes shown in Isola et al's figures show the illustration of outer clothing worn by the user and the inner layer showing sleeping attire worn by the user. In Isola et al, in col. 5, lines 3-6 it is stated that the depiction is "animated" such as by any means by which the person, character, animal, scene or the article appears to have moved or changed position. This change is between the outer blanket with the outer clothing illustration thereon and the inner layer showing the person in the pajamas. Lines 12-19 of Isola et al disclose that the "Composite pictorial illustration" includes a person, character, scene in that it appears in a first condition on the bed clothes element and wherein the same person, character or scene appear in a second condition in a different position or in a different degree of attire from the first condition on the associated bed clothes element. This illustration is the same as Appellant's present claims in that Appellant claims "4 illustrations" representing the 4 step folds required to swaddle an infant. Therefore, Appellant's illustration is also "animated" as stated by Isola et al in that it shows a change of position within the illustration. The change being from the first to second to third to the fourth. The bed clothes element is a blanket as broadly claimed. (See col. 5, line 21). Isola et al teaches a blanket (bed clothes) to show a non-sleeping attire/position on the outer blanket layer/pillow etc. and a sleeping attire position on the inner blanket layer. Isola et al discloses the use of an illustrated blanket on a bed to promote a sleeping position in pajamas and non-sleeping position on the outer clothing. (See col. 11, lines 8-48). As with Isola et al, the specific illustration of Appellant's claimed invention suggests the placing of the user within folded layers of the bed clothes to be swaddling. Isola et al being in a bed between the folded blanket

and sheet. However, the only difference between Appellant's claimed invention and Isola et al is that Isola et al. does not specifically disclose the exact "4 fold" illustrations of a blanket folded about an infant. (i.e. the first fold, the second fold, the third fold and the 4th fold. Isola et al's blanket illustration is for teaching the sleeping steps for an older child or young adult such as within a blanket in a bed. Appellant's claims claim the steps of teaching the sleeping preparation steps for an infant which is swaddling. The specific steps of swaddling a baby are well known in the art . The steps of swaddling are pointed out by appellant in their Declaration and specification as having been taught from generation to generation through the ages. Both appellant's invention and Isola et al's disclose the broad teaching of applying an illustration on a blanket showing the of placing of a blanket on a person or human preparing to sleep and secured within such a blanket for sleep. Accordingly one having ordinary skill in the art at the time the invention was made would have had the skill and common knowledge of the well known swaddling steps (known for many years as stated in Appellant's Declaration and specification as discussed above) and to substitute the illustrations on Isola et al to place the swaddling blanket fold positions on the blanket in order to prepare a younger infant for sleep instead of an adult, child or young adult as in Isola et al.

Isola et al discloses a blanket with illustrations that teach a user how to place a child/user in a bed, on sheets and within the blanket in addition to lining up the blanket, sheets and pillow using the illustrations thereon so that the user is placed within the bedding components to sleep and with the head on the pillow as well known.

The swaddling of babies with blankets, which is just the folding of a blanket about a baby, is well known in the art. As stated on page 1 of appellant's specification it is stated that swaddling is to "bind or wrap tightly such as in clothes or to "Swathe" as of infants such as to swaddle a baby. This is seen in the declaration Lynnete Damir, the appellant, on page 4, that states that "until the middle of the twentieth century swaddling has been taught to new parents/mothers by the family members" or siblings. Also, the fact that the term, "to swathe" is in the dictionary as stated on page 1 by appellant proves in itself that is a well known procedure. The procedure being the wrapping of a baby in a blanket for sleep.

Isola et al discloses printing an illustration that instructs the placement of a user on the blanket and for folding the blanket about the user in sleep, such as when the user is in the bed. Therefore, the general printing of an illustration onto a blanket of instructions for swaddling, which is well known as stated above, in place of the Isola et al illustration that is for the placement of an older child or adult on a blanket for sleeping, would have been an obvious modification of the specific printed matter on the blanket. The substitution of the older child sleeping instructions/illustration of Isola et al for the swaddling illustration of appellant's, would have been an obvious modification just as it is to construct blankets of different sizes for different sized babies, children, young adults, or adults. Isola et al also shows different drawings for different users on the bed clothes themselves for different types of users. Isola et al also suggests the modification of the persons, scenes or articles for the illustration of the desired end use.

Therefore such a modification of "swaddling a baby" which is a "different person" as stated by Isola et al would have been an obvious modification. The modification being for an infant instead of for an older child as seen in Isola et al.

Laundry care and use instruction labels are also well known on blankets. Therefore, the printing of an other labeling instructions such as swaddling instructions on such a label would have been an obvious modification when considering the desired end use. Sleeping position instructions for an infant needs to include specific swaddling instructions versus just the placement of the baby on the bed under a blanket as with an adult, Swaddling keeps the baby is secure and prevents the infant from rolling out of a bed. When constructing blankets with sleeping indicia thereon, such as in Isola et al, one would take into account the user's age and construct a blanket sized and configured to secure that user for sleeping. Just as there are different blankets sized for different sized beds such as twin to king and even crib sized there are also swaddling blankets sized for swaddling a baby. Such a construction of an appropriately sized blanket for an infant would then include instructions for infant versus an older child sleeping as in the Isola et al blanket . Such a blanket would have included instructions for swaddling and not just the picture of an infant lying down on the blanket since an infant placed on the blanket of Isola et al would roll of the bed. Therefore, the most appropriate substitution of the illustration of a sleeping infant would include the instruction of a swaddled baby and not just a baby in sleeping clothes on the flat sheet/blanket. Such a sleeping position depiction, on a blanket ,as shown in Isola et al, would not be the perfect use for an infant- such as lying flat on the

bed. Therefore, the modification of the Isola et al blanket for an infant would have to be a depiction of the well known swaddling steps and such a modification would have been obvious..

Throughout the Isola et al specification, Isola et al discloses the motivation of placing any scene/illustration on the blanket in order to teach any such steps of sleeping or reclining as desired in addition to the aesthetic benefits of such indicia/illustration. Isola et al illustration is to bring comfort to a child in that it teaches the child wearing pajamas or night or sleeping clothes is acceptable. Therefore such a modification of including swaddling illustrations on a blanket would give comfort to the infant user/parent in that they teach the proper sleeping attire of an infant and provide security to the infant. The illustration is printed on the blanket or is reproduced in any know manner as claimed and as discussed above. The illustration of the method for swaddling a baby in place of Isola et al's. placement of a person on the blanket in a sleeping position in night clothes(pajamas) is just a change in the printed matter. Such a different illustration details of the printed matter. and would have been an obvious substitution of common knowledge information that would only be limited by the imagination of the user. The only difference between appellant's claimed invention and Isola et al s invention is the illustrative details of the printed matter and that is not a patentable claimed distinction. The depiction disclosed on the Isola et al blanket/sheets would be any figure/person that is to sleep by lying on or under the blanket and the method of sleeping or reclining that fits the age of person using that blanket. The modification would have been to modify the blanket illustrations according to the age of

the user or infant. The modification would have been done by including the swaddling steps thereon which is the well known steps for sleeping by an infant.

Since it is well known to swaddle babies by folding a blanket thereabout for secure placement of the baby therein, one of ordinary skill in the art at the time the invention was made, would have had the sense and knowledge to modify the teaching of Isola et al to illustrate a depiction of the specific steps of swaddling a baby just as Isola et al discloses a depiction of the steps of preparing a young adult or older child for sleeping . Isola et al steps are for adults and young adults for lies on top of the bed in street clothes and when sleeping at night follows the step of wearing pajamas or night clothes. Since babies are too young for the Isola et al. specific illustration or depiction, one of ordinary skill in the art would have had the skill to substitute the depiction of Isola et al with that of a swaddling baby and any and all steps to acquire a final swaddled position in order to depict a swaddled baby sleeping position. Even though Isola et al does not disclose the specific swaddling steps as appellants, one of ordinary skill in the art at the time the invention was made would have had the skill to construct a blanket sized with the steps for swaddling a baby illustrated to lead to the same result of sleeping and security as provided by Isola et a. The specific steps shown in the illustration itself do not have patentable weight. The Isola et al reference discloses the same invention of a blanket with an illustration thereon including sleeping positions as clearly seen in the figures and as cited throughout above. The information is only modified to better fit a different or younger aged user of an infant/baby instead of a young adult or older child that uses a bed and bed clothes on a bed. Since the only

difference between Isola et al's and Appellant's blanket is the specific content of the information or illustrations set forth by the indicia, this difference alone is not set forth as a patentable distinction. It has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. Therefore when the prior art describes all of the claimed structural and functional relationships between the descriptive material and the substrate but the prior art describes a different descriptive material than the claim, the descriptive material is nonfunctional and will not be given patentable weight. (See in re Ngai 367 F 3d.1336, 70 USPQ2d 1862(Fed. Cir. 2004). In the present case the function of the printed matter on the blanket as showing the placement of the user thereon for sleeping positions and wherein the blanket surfaces support the indicia, which is the same function as Isola et al. Even though such specific illustrations of the "4 fold illustrations" are not given patentable weight, the same general subject matter of Isola et al. would include the blanket with the printed matter thereon that depicts instructions on the blanket for sleeping.

Further more, the fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an end user with a specific type of information document or form does not alter the functional relationship. The specific type of information is easily modifiable for the appropriate end user. Mere support by the substrate for the specific printed matter is not the kind of functional relationship

necessary for patentability. Therefore, the specific sleeping instructions of the 4 fold illustrations printed on a blanket do not provide patentable subject matter.

**Response in Regard to Declarations under 35 CFR 1.132**

The following is a reply to the submission of the declaration of Pamela Jordan, PHD,RN.

The declaration under 35 CFR 1.132 filed 12-12-07 by Pamela Jordan RN HD is insufficient to over come the rejection of claims 39-41 and 44-51 based upon the rejection under 35 USC 103(a) as set forth in the final Office Action because : the showing is not commensurate with the claims.

Declarants statements, which amount to an affirmation that the declarant had never seen the claimed subject matter in the marketplace is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP section 716. The facts as to why the inventive blanket is not patentable or is not in the marketplace is not clear proof that it is non-obvious but is because of other factors and is not proof that such a claimed invention did no t exist or would not have been obvious to one having ordinary skill in the art to construct. Blankets in general are well known in addition to blankets with instructional indicia thereon as seen in Isola et al. Accordingly one of ordinary skill in the art would have had the skill to place any common knowledge indicia on a blanket to instruct one on how to use the blanket as seen in Isola et al.

The declaration included statements which amounted to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to

the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP section 716.

The fact that Appellant's swaddling blanket works well to swaddle a baby would have been obvious to one having ordinary skill in the art since it is well known that the swaddling steps are common knowledge and such steps are known to work. Such placement of swaddling steps on a blanket of how to fold such a blanket for swaddling, or for the placement of a person on a blanket as in Isola et al, would have been obvious and easily obtained with such instructional indicia. It is common knowledge that babies have been swaddled in blankets without a blanket with written instructions for many years. Therefore, a blanket with such indicia thereon would also work just as a blanket without such indicia thereon. The declarant's statements refer only to the system described in the above referenced application and not to the individual claims of the application. Thus there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP section 716.

Declarant has only described the invention in general terms and has not been specific to the claims. Declarant has only generally stated that the invention itself is new, unique and innovative, all of which are opinion not supported by facts relating to the claims.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of non obviousness fails to outweigh the evidence of obviousness.

No real factual evidence has been given by the declarant, Ms. Jordan that supports declarants opinion.

The declaration under 37 CFR 1.132 filed 12-12-07 by Lynette Damir, RN, the inventor , is insufficient to over come the rejection of claims 39-41 and 44-51 based upon the rejection under 35 USC 103 as set forth in the Final Office Action because: the showing is not commensurate with the claims, there is no nexus between the claimed invention and the Commercial Success has not been clearly shown and supported by factual evidence.

Pages 1-2 of the declarants declaration is clearly opinion and is background information in regard to the subject matter of the invention. Such subject matter of swaddling is well known in publications and periodicals in addition to being known to humans over centuries. All of this was also stated on page 4 of Appellants declaration. The benefits of swaddling are also well known. The dictionary even defines "Swathe" as to be of a baby as stated on page 1 of the Appellants specification. There is no nexus between the claimed invention as in the claims and the commercial success as claimed. There is no clear evidence given that the blanket itself with the instruction on the blanket would meet the unmet need any more than the instructions being given in a book, publication or told to the user by word of mouth. The claimed invention does not indicate a specially shaped or formed blanket. Only a generally planar sheet of material with an illustration of swaddling information on the blanket is claimed. No proof or evidence was given that a blanket with a publication, or a blanket with an informed person to instruct the folding of the blanket to swaddle a baby, would not have been just as instructive or successful in swaddling a baby. New parents would inherently not know how to swaddle a baby and only those with such experiences and common knowledge

would know how to educate those that do not know or the new parents would learn through books or publications. No specific blanket structure has been claimed other than the illustrations.

The Gap blanket discussed by the declarant did not include the instruction on or with the blanket. No information on how to swaddle or use the blanket was included. Therefore it does not appear to be a copy of appellants blanket. It is just a blanket of a certain size, color and that has design decorations thereon. Therefore it is not a copy with the instructions included. It is not clear as to how it was considered to be a knock off if the instructions were not on or included with the blanket. Manufacturers can and are allowed to construct baby blankets of any size, shape and design and without the labeled instructions. Therefore, it is not clear as to why the Gap would have had to stop selling their blanket that did not include such labeling. Baby sized blankets for wrapping babies are also well known. The same is true with the Babystyle blanket with instructive tags. The written Gap instructions are also not a direct copy but appear to only include a tag of well known information. The illustrated instructions as seen in appellant's inventive claims was not on either of those blankets. Therefore they are not copies. The information on the competitors blankets - in a written form are common knowledge information and is not the same specific information illustrated by the inventor. It is information that is already present in the marketplace.

Therefore it is not clear as to how the appellant could claim ownership of the information.

The positive feedback and comments discussed by the declarant are only people's opinions. There is no evidence that the unlabeled blankets did not sell only for the reason that they did not include the label. The characteristics of the blankets themselves, price and lack of advertising could have caused the lesser sales amounts than appellants claimed invention and not the fact that the label was not included. Therefore there is no nexus between the claimed invention and that of commercial success as claimed. There is no evidence that the commercial success is due to the label and not the characteristics of the inventive blanket itself. Such characteristics as the color, fabric and size of appellant's blanket. It is not evident that the commercial success of appellant's blanket was also not due to heavy promotion, advertising, a shift in advertising, consumption by regular purchases normally tied to the appellant or their representatives or regular customers of the manufacturer or stores or other business events extraneous to the merits of the claimed invention. The inventors opinion as to what claimed features were responsible for commercial success of an article is not evidence of non-obviousness. The opinion does not serve as sufficient to demonstrate the nexus between the sales and the claimed invention. The sales figures must be adequately defined and substantiated by sales receipts or purchase orders and not just a statement by the inventor or assignee. Gross sales figures do not show commercial success absent evidence of market share or as to what sales would normally be expected in the market. None of the above was provided by the Declarant/Appellant even up to the submission of the Appeal.

Also the previous failure of the long felt need for the blanket may be due to factors such as lack of interest or lack of appreciation of the inventions potential or marketability rather than want of technical know how.

The "alleged" copying of the invention is not persuasive of non-obviousness when the copy is not identical to the claimed product. The previous sold Gap and Babystyle blankets were not identical copies and the comparison is not a fair comparison. They did not include the exact blanket structure absent of the illustrations.

Since the instructive information is common knowledge and widely known and instructed in other ways by others, there does not appear to be a long felt need for swaddling blankets with an illustrated picture thereon. Any instructions included with a blanket would serve the same purpose and fulfill that long felt need.

Appellant did not include any evidence of specific sales receipts with their sales statements in the declaration.

Therefore, the declarations do not overcome the rejection under 35 USC 103(a).

**(10) Response to Argument**

Appellant's invention is a blanket that has an informational illustration on a blanket that instructs one as to the use of the blanket. Isola et al's blanket is also a blanket that has an illustration thereon that instructs one as to the placement of the person on the blanket, the wearing of sleepwear during sleeping and the use of the blanket for sleeping. Appellant is not claiming the specific method of use. However, Isola et al's inventive blanket with illustrations thereon would inherently teach that use

as does appellant's. Appellant is claiming a blanket apparatus just as Isola's does. The content of the illustration or information indicia on the blanket is just "printed matter" that is selected by the maker on how to use the blanket such as by an adult or older child and not an infant. Appellant's specific illustrations do not have any patentable weight over the Isola et al's reference. One of ordinary skill in the art would have had the knowledge to put any known instructive illustrations on the blanket as desired to teach or instruct whatever they desired. The scope of the invention is a blanket with indicia thereon to instruct a user on the steps of how to use the blanket which is the same as the prior art of Isola et al. One of ordinary skill in the art would have had the skill to place any known instruction of use on the blanket as desired in order to use the blanket for swaddling or otherwise. Isola et al's blanket is used with illustrations thereon in order to instruct one of the steps of how to sleep such as in a bed with sleeping clothes thereon. Therefore constructing a blanket with swaddling instructions, which is a method of sleeping for an infant, would have been an obvious modification. Just as putting any other method of use illustrations on the blanket on how to use the blanket would have been an obvious modification. Such as for wrapping around a horse so that the horse can comfortably sleep in the pasture feeling safe and warm. The modification of Isola et al being the illustration on the blanket of the blanket wrapped about the horse. The only difference between the invention and the prior art is the difference in the details of the printed matter in the illustrations on the blanket. The secondary considerations have been discussed above in regard to the two submitted declarations.

The selection of the claimed reference of Isola et al. and the motivation to combine the Isola et al reference with common knowledge, has motivation within the reference of Isola et al.

Isola et al discloses a blanket with instruction thereon that shows one how to sleep in a bed with sleepwear thereon and wherein the blanket is wrapped about the user when in bed. The Isola et al reference states throughout that the person, article or scene is modifiable as desired. Therefore it is obvious to one having ordinary skill in the art to change the size and age of the user from an adult or older child that sleeps on a bed within a blanket and sheets to be of a younger child or infant and to further modify the scene to be that of a baby's usual sleeping position which would be to be a swaddled baby. Such positioning of a baby to sleep is well known in the art- and is called swaddling. This is well known since it is even in the dictionary as admitted by applicant on page 1 of their specification. Wherein "to swathe" is to wrap an infant. Therefore one of ordinary skill in the art at the time the invention was made would have had the skill, knowledge and common sense to provide a blanket sized for an infant and that includes the instructions thereon to put the baby in its most appropriate sleeping position which is swaddling and which is well known to be swaddling. Therefore one of ordinary skill in the art would have had the skills and knowledge to modify the illustration of Isola et al to show the steps of swaddling as indicated in the specification. Just as Isola et al discloses the steps of preparing for bed where in when the older child is on top of the outer blanket they are depicted as wearing their outer all day clothing and when it is bedtime and they are to be placed inside of the blanket on the sheet they are depicted

in their sleeping clothes. And wherein when they are dressed for bed and under the human outer blanket and the blanket is about them and folded along the fold lines of the outer depiction wherein they lie there under. The modification of the printed matter can be illustrated in a manner that is only limited by the imagination of the user. However, the specific printed matter of fold line illustrations for swaddling on the blanket itself does not hold any patentable weight. Isola et al discloses that any such person, scene of elements can be printed or otherwise attached to the blanket that leads one to the use of sleeping or reclining. Therefore the specifics of the swaddling and the fold lines used to swaddle the baby itself does not hold any patentable weight. If such printed matter on a blanket that would be constructed for the sleeping of a horse, dog, a cat, a mouse or a bed bug was to be given such patentable weight then any instructions that are specific to any one of those user's, whether it is the horse, dog, a cat, a mouse or a bed bug would also have to be given patentable weight and not just an infant versus that which is disclosed by Isola et all that discloses an adult or older child's sleeping position and clothing. Wherein the specifics of the illustrations are of a horse is that it is wrapped about their back and fastened at their belly, where the dog would need to be covered with only their tail and nose exposed; the cat with only his eyes exposed and the bed bug wants to be totally covered. Giving such patentable weight to just instructive illustrations attached to any substrate would lead to patentable weight being given for example an ace bandage with illustrations showing it wrapped about each separate appendage on a human body. All of the uses are well known and common knowledge just as is swaddling is a sleeping method of an infant human. Just

by attaching or printing any use illustrations to a substrate to instruct the use of a known substrate such as of a blanket or a bandage does not give the already known substrates with use illustrations attached thereon patentable weight. Just modifying the specifics of the printed matter on the blanket does not make it patentable subject matter as argued by appellant's representative.

In response to Appellant's remarks concerning In Re Gulack, no new functional relationship between the blanket and the printed matter exists. The general subject matter of the printed matter of Appellant's invention is the same as Isola et al in that it discloses the instructions on the sleeping of the user. The only difference is the specifics of the subject matter including age and size of the user and the specifics of the known method of sleeping such as in a bed versus swaddling as discussed above. The subject matter of Appellant's invention of swaddling is well known in the art and printing or otherwise attaching the well known method of sleeping for an infant onto a blanket does not give the blanket any more patentable weight than what has been disclosed by Isola et al. Isola et al would therefore also disclose the printing on a blanket of a horse, a dog, a cat or a mouse using the preferred known sleeping methods of those depicted in the detailed instructive illustrations. The detailed illustrations on each blanket would not yield patentable weight for each blanket produced because the modification of the printed matter does not hold patentable weight. The motivation to construct such a blanket with the dog, cat, horse etc. each with their own sleeping positions and steps is seen in Isola et al wherein that Isola et al disclosed that the person, subject or scene is modifiable as desired in regard to sleeping instructions. The modification would be done

by utilizing well known common knowledge of such sleeping methods by such claimed subjects. Therefore just as with the above examples modifying the Isola et al blanket to include the infant sleeping instructions-well known to be swaddling would have been an obvious modification as discussed above.

On page 11 of the Appellant's argument it is stated that the Examiner has "vacillated as to the allowability of the claims". This is not true. The 2-7-07 action was in response to the claims amended on 10-7-05. The 10-2-05 claims included indefinite language which was then removed from the claims in the next response by Appellant on 4-30-07. The claims amended on 4-30-07 were then broader which required an updated search and consideration. While performing an updated search, since the present invention borders two classification areas of class 2 apparel, in that the blanket is somewhat similar to a garment, and also to all blankets in class 5 wherein the device is a folded blanket, the present garment Examiner in Class 2 consulted with a Primary Examiner in Class 5. This is common in patent examination wherein a claimed invention borders multiple classification areas. Upon such consultation a new reference that met the broader amended claims was found. This led to the new action rejection with Isola et al and common knowledge. Therefore the examiner did not "vacillate" as stated on page 11 of Appellants response but rather updated the search and consideration and consulted with another Primary Examiner in a relevant area when re-examining the amended broader claims. The claims were then amended again to add additional language on 12-12-07. The 12-12-07 claims are the now appealed claims. Therefore, in

conclusion the claims examined on 2-7-07 are not the claims that are being appealed and are in fact broader.

The Declarations are not convincing evidence as suggested by Appellant on pages 12-14 of the Brief. The reasons that the Declarations are not convincing were discussed above in detail.

**In Conclusion**

It is the Examiner's position that Isola et al clearly teaches the blanket with sleeping illustrations/instructions thereon for adults and older children. However, Isola et al does not specifically disclose such sleeping instructions for an infant wherein infants sleep in a swaddled blanket. It is also the Examiner's position that such swaddling of infants is Common Knowledge. According, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the specific illustrations on the Isola et al blanket with the common knowledge of swaddling instructions to provide instructions for sleeping by an infant on a blanket. Isola et al teaches such blanket illustrations on a blanket to provide such sleeping instructions. The specifics of the printed matter illustrations do not provide patentable weight such as the specific "4 folds" illustrated on a blanket. Especially since such illustrations includes subject matter that is common knowledge well known in the art.

Therefore, the rejection of the Appealed claims stand.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Gloria Hale/

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